

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

IN RE: Krista Scruggs Zafa Wines LLC)))	DOCKET NO. 20-034-S
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Ex Parte Order to Cease and Desist

Based on the motion of the Securities Division of the Department of Financial Regulation (the “Department”), pursuant to 9 V.S.A. §§ 5403 and 5604, for an order requiring Krista Scruggs and Zafa Wines LLC (“Respondents”) to cease and desist from offering or selling securities within the meaning of 9 V.S.A. § 5102(28) pending further order of the Commissioner because of violations of 9 V.S.A. §5501 and the immediate need to protect the financial health and welfare of Vermont residents who may be affected by Respondents’ conduct, the Commissioner hereby renders the following findings of fact and conclusions of law and enters the following order:

I. FINDINGS OF FACT

1. Zafa Wines LLC (“Zafa” sometimes herein) is a Vermont limited liability company with a principal place of business at 266 Pine Street, Burlington, Vermont. Zafa leases farm property at 1227 East Shore Road, Isle La Motte, Vermont and may also manufacture or bottle wine from a location on Dorset Street in South Burlington.
2. Krista Scruggs is a resident of Burlington, Vermont and is the founder, managing member and principal winemaker for Zafa.

3. Zafa was founded in March 2018. Zafa marketed itself in promotional materials as part of a “new American” wine revival, focusing on the use of “only organic and biodynamic fruit,” primarily the use of hybrid grapes and wild apples grown in Vermont.
4. On or about September 16, 2019, Respondents made Zafa’s first securities offering (the “Offering”) pursuant to the SEC Regulation D, Rule 506(b) exemption from registration. The offering was made available only to accredited investors.
5. The Offering was made through subordinated convertible promissory notes bearing 8% interest, a 5- year term, and an optional conversion to equity, up to a principal amount of \$300,000.
6. The disclosure materials which accompanied the Offering disclosed certain financial risks, most centered around the fact that Zafa was an “early stage company with little operating history” and that “the company’s success depended heavily on the manager.”
7. Disclosure materials also outlined various business risks, including Zafa’s vulnerability to agricultural risks, reliance on market acceptance and other risks facing the overall wine industry, competition, and reliance on a single product. *Id*
8. The Offering and related disclosure materials failed to disclose specifically Zafa’s need for multiple liquor control and related state and federal licenses in order to legally manufacture, bottle, sell and distribute wine, either within Vermont or to neighboring states, nor of the fact Zafa held none of the required licenses at the time of the Offering. Relevant disclosures say only that “as a manufacturer of

- wine, the Company will be subject to extensive government regulation,” but “the Company does not expect that compliance with existing laws and regulations will have a material adverse effect upon its operating results.”
9. Based on these disclosures and its active winery operations, a reasonable investor would have concluded that Zafa had all the necessary alcohol related licenses to operate its business although it held none. The fact that Zafa did not hold these licenses was fundamental and material to Zafa’s business.
 10. By September 2020, Respondents had raised \$300,000 in an initial offering and offering documents allow them to raise up to \$750,000.
 11. In August 2020, Deputy Commissioner Carrigan was contacted by counsel for a former employee of Zafa outlining certain concerns about Respondents’ business practices. Unfamiliar with Zafa but aware that it would have needed liquor control licensure to operate, Mr. Carrigan checked the Vermont Liquor Control web site and learned that Zafa’s license application was “pending,” no licenses had been issued, and that Zafa was therefore operating without proper licensure.
 12. Because of concerns about the lack of licensure and related financial risks to Zafa investors, Mr. Carrigan subsequently contacted Respondents’ counsel to request information about Zafa’s financial performance.
 13. Despite numerous promises, Zafa has failed to provide, either to the Department or its investors, any data about its actual – as opposed to projected – financial performance.

14. Zafa's continued operation without proper licensure creates material financial and other risks not disclosed in the Offering materials. These risks threaten to significantly impact the value of the securities sold to Vermont investors and to have a material adverse effect on the value of any future Zafa securities.
15. Simply put, Zafa has been operating without the fundamental regulatory approvals required to conduct its core business, and it has not disclosed this material risk to investors.
16. On information and belief, Respondents continue to try to raise funds through the sale of securities in Zafa Wines LLC.
17. Respondents' failure to provide timely information about actual financial performance also prevents investors from assessing Zafa's solvency, creating further risk to their investments.

II. CONCLUSIONS OF LAW

18. Pursuant to 9 V.S.A § 5102(28), the term "security" includes investment contracts and related types of participation in profit-sharing agreements. The investments offered by Respondents are securities within the meaning of Section 5102(28).
19. Pursuant to 9 V.S.A. § 5501(1), it is unlawful for a person to employ a scheme, device, or artifice to defraud another person.
20. By failing to disclose specifically Zafa's need for liquor control licensure and its lack of appropriate licensure, Respondents engaged in a scheme to defraud

Vermonters who bought securities pursuant to the Offering and thereby violated section 5501(1).

21. Pursuant to 9 V.S.A. § 5501(2), it is unlawful for a person to make an untrue statement of material fact, or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
22. By failing to disclose that Zafa needed but did not have various liquor control and related licenses in order to operate its business, Respondents failed to state facts material to investors, in violation of Section 5501(2).
23. By failing to disclose the actual financial performance of Zafa, Respondents failed to state facts material to investors, in violation of Section 5501(2).
24. The above-described violations of Sections 5501(1) and (2) put at risk the value of both existing investments and any future investments in Zafa.

III. Commissioner's Authority

25. Pursuant to 9 V.S.A. § 5604(a)(1), the Commissioner may issue orders or directives to any person to cease and desist from specific conduct if the Commissioner finds that the person has engaged, is engaging or is about to engage in an act, practice or course of business which constitutes a violation of 9 V.S.A. Chapter 150, the Vermont Uniform Securities Act.
26. Pursuant to 9 V.S.A. § 5604(b) and Section 13 of Department Reg 82-1 (Revised), the Commissioner may issue such orders without prior notice or an opportunity to be heard.

27. In light of the known violations of 9 V.S.A. § 5501, Respondents' failure to provide promised financial records, and the risk that the financial health and welfare of additional Vermont residents may be affected by Respondents' conduct, an *ex parte* order is appropriate in this case.

28. The Commissioner may require the production of records pursuant to 8 V.S.A. § 13 and 9 V.S.A. § 5602(b).

IV. Order

Given the aforementioned findings of fact and conclusions of law,

IT IS HEREBY ORDERED:

- A. Respondents shall cease and desist from continuing to offer or sell securities in Zafa or otherwise in Vermont;
- B. Respondents shall segregate and hold in escrow the funds raised through the Offering, until further order of the Commissioner;
- C. Respondents shall not to withhold, destroy, mutilate, or by any means modify or falsify any documentary material in their possession that is relevant to their activities.

Dated at Montpelier, Vermont this 20th day of November 2020



Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation